

STATE OF MICHIGAN
COURT OF APPEALS

RYAN FLEET, BRIDGET FLEET, and DARCIE C.
FLEET, a/k/a, DARCIE C. PICKREN, Individually
and as Next Friend of CORRINE FLEET and
KENDRA FLEET, minors,

UNPUBLISHED
June 20, 2000

Plaintiffs-Appellants,

v

No. 210162
Court of Claims
LC No. 97-016790 CM

STATE OF MICHIGAN, MICHIGAN STATE
POLICE, and ANTRIM COUNTY FAMILY
INDEPENDENCE AGENCY,

Defendants-Appellees,

and

CHARLES H. KOOP, ANTRIM COUNTY
SHERIFF'S DEPARTMENT, DALE
ROGGENBECK, FRANCIS BAILEY, and KEN
KOWALSKI,

Defendants.

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Before: Saad, P.J., and McDonald and Gage, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the Court of Claims' order granting the motion for summary disposition filed by defendants-appellees. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs alleged that the various defendants, governmental agencies and their employees, had knowledge of charges of sexual abuse made against Darcie Fleet's former husband, but failed to

properly investigate the charges or to protect the complainants. The complaint alleged that the employees acted in a grossly negligent manner, and sought to hold the governmental agencies liable for that gross negligence under a theory of respondeat superior. Eventually, all defendants except defendants-appellees were dismissed pursuant to stipulation. Those defendants moved for summary disposition pursuant to MCR 2.116(C)(7) and (8), arguing that plaintiffs alleged no exceptions to tort liability applicable to a governmental agency, that they could not be held vicariously liable for any tort committed by an employee that did not fall within an exception to governmental immunity, and that the complaint failed to state a claim on which relief could be granted. The Court of Claims granted the motion and dismissed the case with prejudice, stating generally that any claim of gross negligence attributable to the State must be dismissed.

We review a trial court's decision on a motion for summary disposition on a de novo basis. When reviewing a motion for summary disposition granted pursuant to MCR 2.116(C)(7), we must accept as true the plaintiff's well-pleaded allegations and construe them in a light most favorable to the plaintiff. The motion should not be granted unless no factual development could provide a basis for recovery. *Smith v YMCA of Benton Harbor/St. Joseph*, 216 Mich App 552, 554; 550 NW2d 262 (1996). A motion for summary disposition brought pursuant to MCR 2.116(C)(8) tests the legal sufficiency of a claim. It must be decided on the pleadings alone, with all well-pled facts and reasonable inferences therefrom taken as true. The motion should be denied unless the claim is so unenforceable as a matter of law that no factual development could establish the claim and justify recovery. *Formall v Community National Bank*, 166 Mich App 772, 777; 421 NW2d 289 (1988).

A governmental agency is immune from tort liability in all cases in which the agency is engaged in the exercise of a governmental function. MCL 691.1407(1); MSA 3.996(107)(1). Several statutory exceptions exist to the broad based grant of immunity for governmental agencies. A governmental agency can be liable for damages caused by an unsafe highway, MCL 691.1402; MSA 3.996(102), by negligent operation of a motor vehicle, MCL 691.1405; MSA 3.996(105), by a dangerous or defective public building, MCL 691.1406; MSA 3.996(106), or by performance of a proprietary function. MCL 691.1413; MSA 3.996(113). These exceptions are to be narrowly construed. *Horace v City of Pontiac*, 456 Mich 744, 749; 575 NW2d 762 (1998). Gross negligence is not a statutory exception to the grant of immunity for governmental agencies. An officer, employee, agent, or volunteer of a governmental agency is immune from tort liability if the person was acting, or reasonably believed himself to be acting, within the scope of his authority, was engaged in the exercise or discharge of a governmental function, and did not engage in conduct amounting to gross negligence. MCL 691.1407(2); MSA 3.996(107)(2). "Gross negligence" is defined as "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." MCL 691.1407(2)(c); MSA 3.996(107)(2)(c). By its express terms, the gross negligence exception to immunity applies only to governmental officers, employees, members, and volunteers, and not to governmental agencies themselves.

Plaintiffs argue that the Court of Claims erred by granting defendants' motion for summary disposition, for the reason that the allegations in the complaint were sufficient to state causes of action against defendants under a theory of respondeat superior for acts of gross negligence by their employees. We disagree and affirm. A governmental agency can be vicariously liable for a tort

committed by an officer, employee, agent, or volunteer only when such a person, acting during the course of employment and within the scope of authority, commits a tort while engaged in a nongovernmental or proprietary activity, or an activity which falls within a statutory exception to governmental immunity. *Ross v Consumers Power Co (On Rehearing)*, 420 Mich 567, 625; 363 NW2d 641 (1984). The determination of whether an activity was a governmental function must focus on the general activity itself, and not on the specific conduct involved at the time of the alleged tort. *Pardon v Finkel*, 213 Mich App 643, 649; 540 NW2d 774 (1995). Plaintiffs do not contend that the actions in which defendants or their employees engaged, i.e., investigation of the allegations against Darcie Fleet's former husband, were not governmental functions. Furthermore, plaintiffs do not assert that defendants or their employees engaged in any activity which fell within one of the statutory exceptions to governmental immunity. The grant of summary disposition by the Court of Claims was proper. *Ross, supra*.

Affirmed.

/s/ Henry William Saad

/s/ Gary R. McDonald

/s/ Hilda R. Gage